WA 9/2007
BEFORE
HON'BLE MR. JUSTICE D.BISWAS, CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE B.D.AGARWAL

Heard Mr. AS Choudhury, learned senior counsel for the appellant and Mr V.M. Thomas, learned Standing Counsel, Education Department.

This appeal is directed against the common judgment and order dated 2.11.2006 passed by the learned Single Judge in WP(C) No. 4595/2001 and various other identical cases.

By the impugned judgment and order, the learned Single judge disposed of a number of writ petitions filed by different petitioners claiming payment of salary challenging one another's appointment made on the basis of three select lists. The learned Single Judge on consideration of the materials on record and after hearing the learned counsel for the parties, came to the conclusion that until it is conclusively decided as to whether any of the three select lists is a genuine and correct one, no direction for payment of salary in favour of any of the writ petitioners can be given. The learned Single Judge further opined that the respective claims of the writ petitioners need detail enquiry and investigation which is not possible in exercise of writ jurisdiction. Observing thus, the learned Single Judge directed the writ petitioners to seek appropriate relief in the civil Court of competent jurisdiction.

Mr. Choudhury, learned senior counsel with reference to the order dated 27th March, 2001 issued by the Deputy Inspector of Schools, Karimganj submitted that the writ appellant Sri Shyamal Dutta has been adjusted against an available vacant post and, therefore, under no circumstances, the authority concerned can withhold his salary.

We have taken into consideration the reasons relied upon by the learned Single Judge in coming to the conclusion that it is not possible for the writ Court to determine the correctness and validity of any of the three select lists upon which the writ petitioners have been staking their claim. In our considered opinion, it would be appropriate if the matter is looked into by the State authority and a decision is taken as to whether any of the three select lists is valid and the appointment made from that valid list is sustainable in law. The State authority shall also satisfy itself as to the compliance of the provisions of Rule 3(vi) of the Assam Elementary Education (Provincialised) Rules, 1977 before a final order is passed in the matter.

For an enquiry as aforesaid, we refer the matter to the State Government in the Education Department to undertake necessary exercise in this behalf and for passing appropriate orders within a period of three months.

Needles to say that the claim of the writ petitioners, including that of the writ appellant Sri Shyamal Dutta shall be examined with reference to the orders of adjustment passed by the authorities at the district level.

It shall, however, remain open to the appellant to approach the appropriate forum if he is not satisfied with the orders that may be passed by the State Government in terms of the above direction.

The writ appeal stands disposed of subject to the above observations/directions.